In that case Farwell L.J. also referred to the case of *In re Manchester Economic Building Society*[2], where Cotton L.J. at p. 499 said :—

"This, I think, may be laid down, that, when the Rules and the Act of Parliament say that an appeal is to be within a certain time unless special leave shall be given by the Court of Appeal to appeal after that time, the Court does not grant leave unless there is something which, in the opinion of the Court, entitles the person who applies for extension of time to be relieved against the bar established by the Orders and the Act of Parliament. It has been called an equity, but that is not a proper term; it is something which entitles him to ask for the indulgence of the Court to ask to be relieved from the legal bar that there is in the Orders and Act of Parliament."

(See also opinions to the same effect expressed in *International Financial Society v. City of Moscow Gas Co.*[3]).

For the above reasons the application is dismissed with costs.

Application dismissed.

Solicitors : *Bannon & Bailey.*

SHE ENG GEK v. D. A. DE SILVA

[A. C. J. (Buhagiar J.) December 6, 1956]

[K. L. — Civil Appeal No. 30 of 1956]

Landlord and Tenant — Claim for possession on ground that tenant had committed a breach of the municipal laws — Proof of conviction — Control of Rent Ordinance, 1948.

In this case the learned President had made an order for vacant possession of certain premises at Kuala Lumpur on the ground that the defendant had committed a breach of the Municipal Ordinance and was therefore excluded from the protection of the Control of Rent Ordinance, 1948. At the trial the learned President ordered a copy of a conviction recorded against the defendant on a charge of an offence under section 144(10)(d) of the Municipal Ordinance; this was a conviction on a plea of guilty which was accepted by the Magistrate. The defendant appealed.

Held: (1) the conviction in the criminal proceedings is no evidence in civil proceedings but the plea of guilty to the charge being an admission which may support the plaintiff's case is admissible;

(2) the admission in this case by the plea of guilty was that the defendant had failed to comply with the order of the President of the Municipal Council to demolish the partitions at the premises and there was no admission that the defendant had made unauthorised major alterations and additional construction in breach of the Municipal Ordinance;

(3) the burden of proving the breach was on the plaintiff and on the facts the plaintiff had failed to discharge the burden on him.

Cases referred to :—

(1) *Zbytniewski v. Broughton* (1956) 3 All E.R. 349.

(2) *Hollington v. Hewthorn & Co. Ltd.* (1943) 2 All E.R. 35.

CIVIL APPEAL.

R. R. Chelliah for the appellant.

S. D. K. Peddie for the respondent.

Buhagiar J. : — This is an appeal from the decision in the Magistrates' Court at Kuala Lumpur where judgment was given for the plaintiff/respondent who prayed for an order of vacant possession of premises known as No. 25 Chow Kit Road, Kuala Lumpur and for double rent (monthly rental $24.00) from the 1st day of July, 1955, to the date of vacation of the said premises.

The plaintiff/respondent relied on section 13(1)(k) of the Control of Rent Ordinance, 1948 and under the provisions of that section he obtained an order from the Rent Assessment Board granting him permission to apply to the Court for the ejectment of the defendant/appellant from the said premises. The learned President held that the defendant/appellant had committed a breach of the Municipal Ordinance and was therefore excluded from protection of the Control of Rent Ordinance, 1948. To prove that the defendant/appellant had committed a breach of the municipality laws the plaintiff/respondent tendered a copy (Ex.P.2) of a conviction recorded against the defendant/appellant on a charge of an offence under section 144(10)(d) of the Municipal Ordinance, this was a conviction on a plea of guilty which was accepted by the Magistrate. The learned President admitted such document in evidence. The grounds of appeal with which it is necessary to deal are :—

(a) that the learned President was wrong in admitting Exhibit P. 2 in evidence; and

(b) that the learned President failed to direct his mind to or in the alternative failed to attach sufficient importance to the evidence of the defendant and his witnesses and the decision of the learned President was not reasonable or supported or justified by the evidence in the case.

With regard to the first ground of appeal it is settled law that a conviction obtained in criminal proceedings is no evidence of a person's guilt in civil proceedings : See *Zbytniewski v. Broughton*[1] where at p. 357 Hodson L.J. said :—

"The learned county court judge appeared to take the view that, in order to bring that matter home in civil proceedings, it would be necessary to do it by means of a conviction. So far from that being the case, it appears to me to be settled law that a conviction would be no evidence of his guilt in civil proceedings. That was decided in **Hollington v. Hewthorn & Co. Ltd.**[2]".

In the latter case, however, Goddard L.J. at p. 42 stated :—

"In the present case, had the defendant before the magistrates pleaded guilty, or made some admission in

giving evidence that would have supported the plaintiff's case, this could have been proved, but not the result of the trial."

In the case of the present appeal, the conviction in the criminal proceedings is no evidence in civil proceedings but the plea of guilty to the charge, being an admission which may support the plaintiff's case, is admissible. Now, it is important to consider the charge to which the defendant pleaded guilty both for the purposes of considering how far that admission helps the plaintiff's case and for the purposes of the second ground of appeal. The charge was that the defendant had failed to comply with an order given by the President of the Municipal Council requiring him to demolish the partitions at premises No. 25 Chow Kit Road, Kuala Lumpur, on or before the 24th November, 1954. Now, in the statement of claim the breach of the provisions of the Municipal Ordinance committed by the defendant on which the plaintiff relied was that the defendant had made unauthorized major alterations and additional construction in the premises in question without the knowledge and consent of the plaintiff. It may be that the defendant had committed such breach and that the order issued to him by the President of the Municipal Council was in respect of such breach but in the criminal proceedings in which the defendant pleaded guilty on the charge referred to above there was no admission of such breach; the only admission was that the defendant had failed to comply with the order of the President of the Municipal Council. The burden of proving the breach on which the plaintiff relied was upon the plaintiff, and the admission made by the defendant in the criminal proceedings does not help his case.

With regard to the second ground of appeal: In coming to his decision on facts the learned President did not rely exclusively on the conviction; he said: "I think that the conviction itself is sufficient evidence but I find as a fact that he did commit such breach." For the reasons set out above, the evidence of the conviction is to be excluded and it is therefore necessary to consider the effect of the second part of the learned President's statement, that is, "I find as a fact that he did commit such breach." It seems clear to me that what the learned President had in mind when he referred to "such breach" was the breach in respect of which the conviction was obtained and that breach was not, as I pointed out earlier the breach of the Municipal laws on which the plaintiff was relying. It is, therefore, necessary to look into the evidence which was before the learned President to find out that the breach relied on was or was not committed. There is nothing in the grounds of judgment of the learned President to indicate that he felt that the witnesses for the defence were not reliable and in default of such expression of opinion and in default of anything arising from the written depositions of the witnesses for the defence to show that such witnesses are not reliable, their evidence cannot be disregarded. Having considered the evidence I have come to the conclusion that the finding of fact of the learned President that the defendant had committed the breach of law relied on by the plaintiff was not supported by the evidence. The plaintiff bought the premises in question when it was already occupied by the defendant as tenant and there is ample evidence to show that when he bought these premises and when the defendant moved in, such premises were divided into seven rooms; no alterations, apart from repairs, were made by the defendant.

For these reasons, the suit should have been dismissed and the appeal is allowed with costs here and below.

Appal allowed.

Solicitors: *R. R. Chelliah; Bannon & Bailey.*

W. G. BUTTERY v. JAMES WARREN & CO. LTD.

[O. C. J. (Pretheroe J.) January 12, 1956]

[Ipoh — Civil Suit No. 36 of 1955]

Contract of employment — Conflict between provisions in clauses therein — Construction.

The issues in this case concerned the correct construction of clauses in a contract of employment made between the plaintiff and the defendants. By clause 9 of the contract either party thereto had rights to determine the contract by giving the other party three months' notice in writing of such intention. Pursuant to this the defendants gave the required notice to the plaintiff determining his service with them with effect from November 30, 1954 and were willing to fulfil their obligation to provide plaintiff with passage to the United Kingdom. For personal reasons plaintiff preferred to remain in Malaya and requested the defendants to pay him his leave salary in Malaya in the form of a lump sum payment. The defendants agreed to this proposal and this raised the first issue viz. to what "salary" was plaintiff entitled when absent from Malaya after the prescribed period of notice to terminate his contract had expired?

By clause 9(1) of the contract, in the event of the Company terminating the employee's service he was entitled to: (a) salary up to date upon which the notice expired; (b) "dearness allowance" up to the date upon which the notice expired; and (c) furlough salary as provided in clause 13 thereof. Clause 13 provided, *inter alia*, in respect of the above said furlough the employee should be entitled to: (a) salary in terms of clause 8(1) of the said contract to which the employee would have been entitled had he been continuing his duties in Malaya; and (b) "dearness allowance" during the above said period of furlough. Clause 14, however, provided *inter*